TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 522.

THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY OF TEXAS, PLAINTIFF IN ERROR,

vs.

L. C. CADE.

IN ERROR TO THE JUSTICE COURT, PRECINCT No. 7, DALLAS COUNTY, STATE OF TEXAS.

FILED APRIL 21, 1913.

(23,648)

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INDEX.

	Original.	Print
Caption	1	1
Preliminary orders	1	1
Citation	1	1
Alias citation	2	2
First amended answer	4	3
Statement of facts	6	4
Testimony of L. C. Cade	6	4
D. A. Charlton	7	5
W. R. Hinckley	7	5
Judgment	8	6
Notice of appeal	9	7
Execution	9	7
Exhibit D—Account	10*a*	7
E—Account	10*b*	7
F—Check	10*c*	7
G—Account	10*d*	7
Assignment of errors	11	8
Petition for writ of error	15	10
Bond on writ of error	20	12
Writ of error	23	13
Citation and service	25	14
Certificate of justice	26	15
Return to writ of error	27	16
Clerk's certificate	27	16

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 21, 1914.

1 *Caption.*

At a term of Justice Court, Precinct No. 7, Dallas County, Texas, the following proceedings were had, to-wit:

No. 1467.

L. C. CADE
vs.
MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS.

Plaintiff's Attorney, S. A. Charlton.
Defendant's Attorney, Byrd E. White.

Suit for services and attorney's fees, $19.75. Filed 21st day of December, 1912. Citation issued 21st day of December, 1912. Alias citation issued 4th day of January, 1913. Returned executed 4th day of January, 1913.

Preliminary Orders.

Motion for rule for costs set for Monday, March 3rd, at 2:00 p. m., and bond for costs was filed on said date.

Cause being called for trial on the 3rd day of March, 1913, defendant was given leave to file amended answer in form of general demurrer, special exception to the pleading of plaintiff for attorney's fees in said cause and general denial.

Citation.

THE STATE OF TEXAS:

To the Sheriff or any Constable of Dallas County, Greeting:

You are hereby commanded to summon The Missouri, Kansas and Texas Railway Company of Texas to be and appear before me, a Justice of the Peace in and for Precinct No. 7, Dallas County, at the next regular term of the Justice Court, to be begun and holden at the City of Dallas, on the 18th day of January, 1913, at 10 o'clock A. M., then and there to answer the complaint of L. C. Cade in a certain suit therein pending, in which said L. C. Cade is plaintiff, against
2 said Missouri, Kansas and Texas Railway Company of Texas is defendant. Filed on the 21 day of December, 1912, and numbered on Docket No. 1467. The nature of plaintiff's demand being in substance as follows: Suit for services rendered said Railway Company and also for attorney's fees.

Herein fail not, but have you then and there this writ, with your return thereon, showing how you have executed the same.

Given under my hand officially, this 21 day of December, A. D. 1912.

J. P. COOPER,
Justice of the Peace, Precinct No. 7,
Dallas County, Texas.

Constable's Return.

Came to hand this 23 day of Dec. A. D. 1912, at 9 o'clock A. M., and executed this 26 day of Dec. A. D. 1912, at 3 o'clock P. M., by delivering to the following named defendant: C. C. Beach, Chief Clerk local freight office, in person, a true copy of this Citation.

J. E. MILLER,
Constable Precinct No. 7, Dallas County, Texas,
By WILL WELLS, *Deputy.*

Fees.

Serving 1 copy.....	$.70
Mileage 3 miles.....	.30
Total	$1.00

Endorsements: No. 1467. In the Justice Court. L. C. Cade vs. The Missouri, Kansas and Texas Railway Co. of Texas. Citation. Issued this 23 day of Dec., A. D. 1912. J. P. Cooper, Justice of the Peace, Precinct No. 7, Dallas Co., Texas.

Alias Citation.

THE STATE OF TEXAS:

To the Sheriff or any Constable of Dallas County, Greeting:

3 You are hereby commanded to summon The Missouri, Kansas and Texas Railway Company of Texas to be and appear before me, a Justice of the Peace in and for Precinct No. 7, Dallas County, at the next regular term of the Justice Court, to be begun and holden at the City of Dallas, Texas, on the 18 day of January, 1913, at 10 o'clock A. M., then and there to answer the complaint of L. C. Cade in a certain suit therein pending, in which said L. C. Cade is plaintiff against said Missouri, Kansas and Texas Railway Company of Texas, defendant. Filed on the 21 day of December, 1912, and numbered on Docket No. 1467. The nature of plaintiff's demand being in substance as follows: Suit for services rendered said Railway Company, also for attorney's fees, aggregating the sum of $19.75.

Herein fail not, but have you then and there this writ, with your return thereon, showing how you have executed the same.

Given under my hand officially, this 4 day of January, A. D. 1913.

J. P. COOPER,
Justice of the Peace, Precinct No. 7,
Dallas County, Texas.

Constable's Return.

Came to hand this 4 day of Jan., A. D. 1913, at — o'clock — M., and executed this 6 day of *Dec.*, A. D. 1913 at — o'clock — M., by delivering to the following named defendant: C. C. Beach, Chief Clerk M., K. & T. local Frt. office, in person, a true copy of this Citation.

J. E. MILLER,
Constable Precinct No. 7, Dallas County, Texas,
By WILL WELLS, *Deputy.*

Fees.

Serving 1 copy.....	$.70
Mileage 3 miles.....	.30
Total	$1.00

Endorsements: No. 1467. In the Justice Court. L. C. Cade vs. The Missouri, Kansas and Texas Railway Company of
4 Texas. Citation. Issued this 4 day of January, A. D. 1913. J. P. Cooper, Justice of the Peace, Precinct No. 7, Dallas Co., Texas.

Defendant's First Amended Answer.

In Justice Court, Precinct No. 7, at Dallas, Dallas County, Texas,
J. P. Cooper, J. P.

No. 1467.

L. C. CADE
vs.
MISSOURI, KANSAS & TEXAS RAILWAY CO. OF TEXAS.

Now comes defendant in the above cause, by its attorney, and excepts to plaintiff's petition herein and says that the same is insufficient in law to require it to answer and should be dismissed.

And for special exception defendant shows the following: That the plaintiff is not entitled to recover an attorney's fees, and no recovery should be had by him on that account, because the act of the Legislature of Texas, approved March 13th, 1909, upon which the claim for an attorney's fees is based, the same bein Chapter 47 of the act of 1909, and entitled "An act to regulate the presentation and collection of claims for personal services or for labor rendered, or for material furnished, or for overcharges in freight or express, or for any claim for lost or damaged freight, or for stock killed or injured by any person or corporation, against any person or corporation doing business in this State, and providing a reasonable amount of attorney's fees to be recovered, in cases where the amount of such claims shall not exceed Two Hundred ($200.00) Dollars, and de-

claring an emergency," and being Articles 2178 and 2179, Revised Civil Statutes of 1911, is void:

First. Because said act of the Legislature violates that
5 provision of Section 1 of the 14th Amendment to the Constitution of the United States which guarantees the equal protection of the law.

Second. Because said act of the Legislature violates that provision of Section 1 of the Fourteenth Amendment to the Constitution of the United States which declares that no State shall deprive any person of life, liberty, or property, without due process of law. And

Third. Because said act of the Legislature is in part a regulation of, a burden upon and an interference with interstate commerce, contrary to Subdivision 3, Section 8, Article 1 of the Constitution of the United States and the Act to Regulate Commerce approved February 4th, 1887, and the acts amendatory thereof and supplementary thereto passed by Congress pursuant to said subdivision, and since the good, if any, and the bad in the act are inseparable, the whole act must fail.

To render judgment against defendant for an attorney's fee would, therefore, violate said provisions of the Constitution of the United States and said acts of Congress.

And for further answer herein, if such answer be necessary, without waiving any of its exceptions herein but still insisting on the same, this defendant denies each and every allegation in plaintiff's petition contained, and says that the same are not true in whole or in part, and of this it puts itself upon the country.

Wherefore, defendant prays judgment of the Court, that plaintiff take nothing by his suit, and that it go hence without day with its costs & etc.

BYRD E. WHITE,
Attorney for Missouri, Kansas & Texas Railway Company of Texas.

Endorsements: In the Justice Court, Precinct No. 7, Dallas
6 County, Dallas, Texas. J. P. Cooper, J. P. No. 1467. L. C. Cade vs. Missouri Kansas & Texas Railway Company of Texas. Defendant's First Amended Answer. Filed March 3rd, 1913. J. P. Cooper, J. P., Precinct No. 7. Byrd E. White, attorney for defendant.

Statement of Facts.

Testimony of L. C. Cade.

My name is L. C. Cade. I worked for the Missouri, Kansas & Texas Railway Company of Texas during the month of December, 1911, near Letot and Farmers Branch, 13½ days at $1.50 per day. He stated he received a check for $9.50 from the agent at Farmers Branch for his services during the month of December, 1911, and at the time told the agent the amount was in error, and the agent informed him that he could get his money on that voucher. He later

went to John Klipp and told him the amount was in error, and John Klipp promised to have same corrected. He went to John Klipp with the intention of fighting him if he didn't promise to pay same, and placed this claim in the hands of Charlton & Charlton, attorneys, in November, 1912, and had made claim for same previously, but I didn't state the date claimed; I claimed that I had a record of my time but did not introduce it in evidence. I also stated that there were several other men who knew how many days I worked, but I did not offer them in evidence. I admitted signing the receipt for voucher for $9.50, endorsing voucher for $9.50, containing on face of voucher a statement that it was in full for services rendered during month of December, 1911. I never received any money for services rendered during month of December, 1911, other than the voucher for $9.50. I never received the $10.75 sued for. The agent stated that I was signing for $9.50 only.

Agreed to.

S. A. CHARLTON,
Attorney for Plaintiff.
BYRD E. WHITE,
Attorney for Defendant.

7 *Testimony of S. A. Charlton.*

Mr. Cade placed this account for labor in my hands for collection. I presented the claim for $10.75 labor to defendant on November 9, 1912. They did not pay same within thirty days, and I filed suit on December 21, 1912. I represent Mr. Cade in this suit. We ask $9.00 attorney's fees. In my opinion this is reasonable.

Cross-examination:

I asked for $9.00 attorney's fees. I was influenced in part as to the amount by the $20.00 exclusive jurisdiction of Justice Court. In the majority of cases in Justice Court I have not received either $5.00 or $10.00. As a rule for attorney's fees in Justice Court I have received various amounts.

Agreed to.

S. A. CHARLTON,
Attorney for Plaintiff.
BYRD E. WHITE,
Attorney for Defendant.

Testimony of W. R. Hinckley.

My name is W. R. Hinckley and I am Chief Clerk of the pay-roll department of The Missouri, Kansas & Texas Railway Company of Texas. I examined the pay-roll sheets sent in by the section foreman of The Missouri, Kansas & Texas Railway Company of Texas, and know the signature of John Klipp, the section foreman who kept the time of L. C. Cade during the time he is sueing for in this case.

The time roll offered in evidence was testified to by witnesses as being sent in by John Klipp, and the signature as shown on same was testified to by witness as being the signature of John Klipp, and the time roll sheet testified to by witness is hereto attached, marked Exhibit "D."

The pay roll sheet, marked Exhibit "E," hereto attached, was offered in evidence and testified to by Mr. Hinckley as being from the pay-roll department of defendant and as being a correct
8 record kept of the time of L. C. Cade, as turned in by John Klipp. The voucher number 1128 issued by The Missouri, Kansas & Texas Railway Company of Texas for $9.50 in favor of L. C. Cade, marked in full of services rendered The Missouri, Kansas & Texas Railway Company of Texas during the month of December, 1911, was introduced and testified to by Mr. Hinckley as being the one sent out to pay L. C. Cade, this voucher being marked Exhibit "F" and hereto attached.

Receipt for voucher received was next introduced and testified to by Mr. Hinckley as the receipt sheet sent to the company's agent to be signed by L. C. Cade when voucher was delivered and marked Exhibit "G."

Cross-examination:

Witness testified that he had never seen John Klipp sign his name, and their record for payment was made by the time sheet sent in by Foreman John Klipp.

Agreed to.

S. A. CHARLTON,
Attorney for Plaintiff.
BYRD E. WHITE,
Attorney for Defendant.

Judgment of Court.

No. 1467.

L. C. CADE
vs.
MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS.

3RD DAY OF MARCH, A. D. 1913.

This day came the parties by their attorneys and submit the matter in controversy as well of fact as of law to the court, and the evidence and argument of counsel having been heard and fully understood, it is considered, ordered, adjudged and decreed by the court that the said plaintiff, L. C. Cade, do have and recover of the said defendant, The Missouri, Kansas & Texas Railway Company of Texas, the sum of nineteen and 75/100 Dollars ($19.75), with interest from date at the rate of six per cent. per annum, together
9 with his costs in this behalf expended, and that he have his execution.

J. P. COOPER,
Justice of the Peace.

Form 82. 5-10-1,000,000

NUMBER	SENT TO	SENDER	RECEIVER	TIME SENT
NUMBER	REC'D FROM	SENDER	RECEIVER	TIME REC'D

Missouri, Kansas & Texas Railway System.

Missouri, Kansas & Texas Railway Co.
The Missouri, Kansas & Texas R'y Co. of Texas.

TELEGRAM.

FILED ... M.

The M. K & T. Ry. Co. of Texas.
SUPT'S OFFICE.
JAN 1912
DENISON, TEXAS
Rec'd

TELEGRAMS MUST BE BRIEF.

Letoto 12-31 1911

Sunday Denison

Deduct the = 294 30 from Ella Young
" " " " " " L. C. Cade
" one day the 30 " E. C. Moody
" on day and 5/10 the fm Henry Alder
" one Day the 30 from W. C. Riddy

Explained "O" & Coupings.

Jno Kliffe
Iman Fence Gauge #1

10/2

MAPS

TOO

LARGE

FOR

FILMING

Notice of Appeal.

Defendant excepts and in open court gives notice of appeal.

Execution.

THE STATE OF TEXAS:

To the Sheriff or any Constable of Dallas County, Greeting:

Whereas, on the 3rd day of March, A. D. 1913, before me, a Justice of the Peace in and for Precinct No. Seven, of the County of Dallas, L. C. Cade, plaintiff, recovered a judgment against the Missouri, Kansas and Texas Railway Company of Texas, defendant, for the sum of nineteen and 75/100 Dollars and all costs of suit.

Therefore, you are hereby commanded, That of the goods and chattels, lands and tenements of said Missouri, Kansas & Texas Railway Co. of Texas you cause to be made the said sum of nineteen and 75/100 Dollars with interest thereon from the 3rd day of March, A. D. 1913, at the rate of six per cent. per annum, together with the sum of three and 85/100 Dollars costs of suit, and the further costs of executing this writ.

Herein fail not, and have you the said moneys, together with this writ, at my office in Precinct No. 7, Dallas County, within sixty days from the date thereof.

Given under my hand this 14 day of March, 1913.

J. P. COOPER,
Justice of the Peace, Precinct No. 7,
Dallas Co., Texas.

Justice's Fees: Docketing Suit, 10c.; issuing 2 Citations, $1.00; Entering Order, 25c.; Swearing 3 Witnesses, 30c.; Entering Final Judgment, 50c.; Issuing Execution, 60c.; Taxing Cost and Copy, 10c.; Filing 2 Papers, 10c.; Total Justice's fees, $2.95.

Constable's Fees: Serving Citation, 70c.; Mileage (per mile 10c.), 20c.; Total Constable's Fees, 90c.

Total all fees: $3.85.

10 Endorsements: No. 1467. Justice's Court, Precinct No. 7. L. C. Cade vs. Missouri, Kansas & Texas Ry. Co. of Texas. Execution. Issued this 14 day of March, A. D. 1913. J. P. Cooper, J. P., Precinct No. 7, Dallas Co., Tex.

Came to hand the 14th day of March, 1913, and returned the 28 day of March, 1913. Not served by order of att'y for plaintiff.

J. E. MILLER,
Constable Precinct No. 7, Dallas Co., Tex.,
By T. C. MALLARD, *Deputy.*

Return 40c.

(Here follow fac-simile papers marked pages 10*a*, 10*b*, 10*c*, and 10*d*.)

11 In the Supreme Court of the United States.

No. —.

THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS, Plaintiff in Error,
v.
L. C. CADE, Defendant in Error.

Assignment of Errors.

Now comes the Missouri, Kansas & Texas Railway Company of Texas, plaintiff in error in this cause, and makes and files this, its assignment of errors committed by the Justice Court of Justice Precinct No. 7, Dallas County, Texas, in the disposition of said cause, as shown by the record and proceedings therein.

1. The said Justice Court erred in overruling, and in not sustaining plaintiff in error's first special exception to that part of the demand claiming an attorney's fee, said special exception reading as follows:

"First. Because said act of the Legislature violates that provision of Section 1 of the 14th Amendment to the Constitution of the United States which guarantees the equal protection of the law."

2. The said Justice Court erred in overruling and in not sustaining plaintiff in error's second special exception to that part of the demand claiming an attorney's fee, said exception reading as follows:

"Second. Because said act of the Legislature violates that provision of Section 1 of the 14th Amendment to the Constitution of the United States which declares that no State shall deprive any person of life, liberty, or property, without due process of law."

3. The said Justice Court erred in overruling and in not sustaining plaintiff in error's third special exception to that part of the
12 demand claiming an attorney's fee, said exception reading as follows:

"Third. Because said act of the Legislature is in part a regulation of, a burden upon and an interference with interstate commerce, contrary to Subdivision 3, Section 8, Article I, of the Constitution of the United States and the Act to Regulate Commerce approved February 4th, 1887, and the acts amendatory thereof and supplementary thereto passed by Congress pursuant to said subdivision, and since the good, if any, and the bad in the act are inseparable, the whole act must fail."

4. The said Justice Court erred in holding the statute upon which the claim for an attorney's fee is based, valid, same being entitled:

"An Act to regulate the presentation and collection of claims for personal services or for labor rendered, or for material furnished, or for overcharges in freight or express, or for any claim for lost or damaged freight, or for stock killed or injured by any person or corporation, against any person or corporation doing business in this State, and providing a reasonable amount of attorney's fees to be re-

covered, in cases where the amount of such claims shall not exceed two hundred ($200) dollars, and declaring an emergency,"

and now forming Articles 2178 and 2179 of the Texas Revised Civil Statutes of 1911, as against plaintiff in error's objection thereto, that said statute is void because in conflict with that provision of Section 1 of the Fourteenth Amendment to the Constitution of the United States which prohibits the States from denying to any person within their jurisdiction equal protection of the laws.

5. The said Justice Court erred in holding the aforesaid statute upon which the claim for an attorney's fee is based valid as against the objection of plaintiff in error that the said statute is void because in conflict with that provision of Section 1 of the Fourteenth Amendment to the Constitution of the United States which prohibits the States from depriving any person of property without due process of law.

6. The said Justice Court erred in holding the aforesaid statute upon which the claim for an attorney's fee is based valid as against the objection of plaintiff in error that the said statute is void because it in part conflicts with Subdivision 3, Section 8, Article I, of
13 the Constitution of the United States, which confers upon Congress the power to regulate commerce with foreign nations and among the several States, and the Act to Regulate Commerce approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, and since the statute is indivisible and that which is good, if any, cannot be separated from that which is bad, it must fail in whole.

7. The said Justice Court erred in holding the aforesaid attorney's fee statute valid, and in rendering judgment in favor of defendant in error for an attorney's fee based thereon.

ALEXANDER S. COKE,
ALEXANDER H. McKNIGHT,
Attorneys for Plaintiff in Error The Missouri, Kansas & Texas Railway Company of Texas.

JOSEPH M. BRYSON,
BRITTON & GRAY,
Of Counsel.

14 [Endorsed:] No. —. In the Supreme Court of the United States. The Missouri, Kansas & Texas Railway Company of Texas, Pl'tiff in Error, vs. L. C. Cade, Def't in Error. Assignment of Errors. Filed April 3rd, 1913. J. P. Cooper, Justice of Peace, Precinct No. 7, Dallas Co., Texas.

15 In the Supreme Court of the United States.

No. —.

THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS,
Plaintiff in Error,
v.
L. C. CADE, Defendant in Error.

Petition for Writ of Error.

To the Honorable Supreme Court of the United States:

The petition of The Missouri, Kansas & Texas Railway Company of Texas, a corporation chartered and existing under the laws of the State of Texas, with its principal office in the City of Dallas, Dallas County, said State, respectfully shows:

That petitioner was defendant in a certain case originating in the Justice Court of Justice Precinct No. 7, Dallas County, Texas, wherein the said L. C. Cade was plaintiff, said cause being numbered 1467 on the docket of said Court and styled L. C. Cade v. The Missouri, Kansas & Texas Railway Company of Texas and in which judgment was, on March 3, 1913, rendered in favor of the defendant in error and against petitioner for the sum of Nineteen and 75/100 Dollars ($19.75) with interest thereon from said date at the rate of six per cent. (6%) per annum and all costs of suit, Nine Dollars ($9.00) of said amount being an attorney's fee and the remainder representing wages claimed by defendant in error.

That the said Justice Court is the highest court of the State of Texas in which a decision of this action could be had.

That in said cause petitioner duly filed its answer, denying that it owed defendant in error the wages claimed and asserting that the statute of the State of Texas upon which the claim for an attorney's fee was based is void, first, because in conflict with that provis-

16 ion of Section 1 of the Fourteenth Amendment to the Constitution of the United States which prohibits the States from denying to any person within their jurisdiction the equal protection of the laws; second, because in conflict with that provision of said Section 1 of the Fourteenth Amendment to the Constitution of the United States which prohibits the States from depriving any person of property without due process of law; and third, because in part in conflict with Subdivision 3, Section 8, Article I, of the Constitution of the United States, which confers upon the Congress power to regulate commerce with foreign nations and among the several States, and the Act to Regulate Commerce, approved February 4, 1887, and the Acts amendatory thereof and supplementary thereto, and since the different parts of the Act are so intermingled that the good, if any, cannot be separated from the bad, the Act must fail as a whole; the said statute being entitled,

"An Act to regulate the presentation and collection of claims for

personal services or for labor rendered, or for material furnished, or for overcharges in freight or express, or for any claim for lost or damaged freight, or for stock killed or injured by any person or corporation, against any person or corporation doing business in this State, and providing a reasonable amount of attorney's fees to be recovered, in cases where the amount of such claims shall not exceed two hundred ($200) dollars, and declaring an emergency,"

and being Articles 2178 and 2179 of the Texas Revised Civil Statutes of 1911, reading as follows:

"Article 2178. Hereafter, any person in this state having a valid, bona fide claim against any person or corporation doing business in this state, for personal services rendered or for labor done, or for material furnished, or for overcharges on freight or express, or for any claim for lost or damaged freight, or for stock killed or injured by such person or corporation, its agents or employés, may present the same to such person or corporation or to any duly authorized agent thereof, in any county where suit may be instituted for the same; and if, at the expiration of thirty days after the presentation of such claim, the same has not been paid or satisfied, he may immediately institute suit thereon in the proper court; and if he shall finally establish his claim, and obtain judgment for the full amount thereof, as presented for payment to such person or corporation in
17 such court, he shall be entitled to recover the amount of such claim and all costs of suit, and, in addition thereto, a reasonable amount as attorney's fees; provided, he has an attorney employed in the case, not to exceed twenty dollars, to be determined by the court or jury trying the case.

"Art. 2179. Nothing in this chapter shall be construed to repeal, or in any manner affect, any provision of the law now in force, giving a remedy to persons having claims of the character mentioned in this chapter, but the same shall be considered as cumulative of all other remedies given to such person or persons."

That said statute was declared void under the State Constitution by the Court of Civil Appeals for the Second Supreme Judicial District of Texas at Fort Worth, in the case of Fort Worth & Denver City Railway Company v. Loyd, 132 S. W. R. 899, in which a writ of error was denied by the Supreme Court of Texas, and based upon which this Court, in the case of Gulf, Colorado & Santa Fe Railway Company v. Dennis, 224 U. S. 503, reversed the judgment of the County Court of Milam County, Texas, and remanded the cause for further proceedings not inconsistent with its opinion therein; but notwithstanding this the Supreme Court of Texas, in Missouri, Kansas & Texas Railway Company of Texas v. Mahaffey, 150 S. W. R. 881, sustained the statute under the State Constitution.

That the said Justice Court overruled and denied the aforesaid contentions of petitioner as to the invalidity of said statute, and rendered judgment in favor of defendant in error for an attorney's fee based upon the statute in the sum of Nine Dollars ($9.00), thereby denying the rights, titles, privileges and immunities specially set up and claimed by petitioner under the said provisions of the Constitu-

tion and laws of the United States, and in so holding and rendering judgment, the Court committed errors as are specifically pointed out in the assignment of errors filed herein, to which assignment reference is made.

Wherefore, petitioner prays that a writ of error be allowed, to bring up for review before the Supreme Court of the
18 United States the said order and judgment of the said Justice Court of Justice Precinct No. 7, Dallas County, Texas, and that it have such other and further relief in the premises as may be meet, and thus it will ever pray.

ALEXANDER S. COKE AND
ALEXANDER H. McKNIGHT,
Attorneys for Plaintiff in Error The Missouri, Kansas & Texas Railway Company of Texas.

JOSEPH M. BRYSON,
BRITTON & GRAY,
Of Counsel.

The writ of error prayed for in the foregoing petition is hereby allowed, the same to operate as a supersedeas, and the bond for that purpose is fixed at the sum of Five Hundred Dollars ($500.00).

Done this the 25 day of March, A. D. 1913.

J. R. LAMAR,
Associate Justice of the Supreme Court of the United States.

19 [Endorsed:] No. —. In the Supreme Court of the United States. The Missouri, Kansas & Texas Railway Company of Texas, Pl'tiff in Error, vs. L. C. Cade, Def't in Error. Petition for Writ of Error.

20 In the Supreme Court of the United States.

No. —.

THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS, Plaintiff in Error,
v.
L. C. CADE, Defendant in Error.

Writ of Error Bond.

Know all men by these presents: That we, The Missouri, Kansas & Texas Railway Company of Texas, a corporation chartered and existing under the laws of the State of Texas, with its principal office in the City of Dallas, Dallas County, Texas, as principal, and the American Surety Company of New York, a corporation organized and existing under the laws of the State of New York and having an

office and regular place of business in the City of Dallas, Dallas County, Texas, as surety, are held and firmly bound unto L. C. Cade in the sum of Five Hundred Dollars lawful money of the United States of America, to the payment of which well and truly to be made we bind ourselves and each of us and our and each of our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this the 15th day of March, in the year of our Lord 1913.

Whereas, in the above entitled cause, the said The Missouri, Kansas & Texas Railway Company of Texas, plaintiff in error, seeks to prosecute its writ of error in the Supreme Court of the United States to reverse the judgment rendered in said cause by the Justice Court of Justice Precinct No. 7, Dallas County, Texas, in favor of defendant in error and against plaintiff in error:

21 Now, therefore, the condition of this obligation is such that, if the above-named The Missouri, Kansas & Texas Railway Company of Texas, plaintiff in error, shall prosecute its writ of error to effect and answer all damages and costs that may be adjudged if it shall fail to make good its plea, then this obligation to be void; otherwise, to remain in full force and virtue.

THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS,
By ALEXANDER S. COKE, *Its General Attorney.*
THE AMERICAN SURETY CO. OF N. Y.,
[SEAL.] By G. G. SHEERIN, *Att'y in Fact.*

The above and foregoing bond is approved, this the 25 day of March, A. D. 1913.

J. R. LAMAR,
Associate Justice of the Supreme Court of the United States.

22 [Endorsed:] No. —. In the Supreme Court of the United States. The Missouri, Kansas & Texas Railway Company of Texas, Pl'tiff in Error, vs. L. C. Cade, Def't in Error. Writ of Error Bond. Filed April 3, 1913. J. P. Cooper, Justice of the Peace, Precinct No. 7, Dallas County, Texas.

23 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Justice of the Justice Court, Precinct No. 7, Dallas County, State of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Justice Court, before you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between L. C. Cade, plaintiff, and The Missouri, Kansas & Texas Railway Company of Texas, defendant, wherein was drawn in question the validity of a treaty or

statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question
24 the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said defendant, The Missouri, Kansas & Texas Railway Company of Texas, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-sixth day of March, in the year of our Lord one thousand nine hundred and thirteen.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by

J. R. LAMAR,
Associate Justice of the Supreme Court of the United States.

25 UNITED STATES OF AMERICA, *ss:*

To L. C. Cade, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Justice Court, Precinct No. 7, Dallas County, State of Texas, wherein The Missouri, Kansas & Texas Railway Company of Texas is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable J. R. Lamar, Associate Justice of the Su-

preme Court of the United States, this twenty-sixth day of March, in the year of our Lord one thousand nine hundred and thirteen.

J. R. LAMAR,
Associate Justice of the Supreme Court of the United States.

Service of the within writ is hereby waived & service in said cause is accepted this the 1st day of April A. D. 1913.

CHARLTON & CHARLTON,
Att'ys for Def't in Error.

26 *Costs of Suit.*

Justice's Fees	$2.75
Constable's Fees	1.13
Costs of Transcript in Writ of Error proceedings	2.90
Total	$6.78

Certificate.

STATE OF TEXAS,
County of Dallas:

I, J. P. Cooper, Justice of the Peace in and for Justice Precinct No. 7, Dallas County, Texas, do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings in the case of L. C. Cade, plaintiff, vs. The Missouri, Kansas & Texas Railway Company of Texas, defendant, number 1467, as the same now appears on file in my office; that the exhibits attached to the said transcript and numbered "D", "E", "F" and "G", respectively, are the original exhibits offered in connection with the testimony upon the trial of the case; that a true and correct copy of the assignment of errors attached to said transcript is now on file in my office; that the original writ of error bond, a true copy of which is attached to the transcript, is now on file in my office, and that the original petition for a writ of error from the Supreme Court of the United States to the Justice Court of Precinct No. 7, Dallas County, Texas, the orginal writ of error and the original citation in error are thereto attached, together with a bill of costs.

I do further hereby certify that no opinion was rendered in the said cause, the judgment being the only evidence of what was decided, and that a Justice Court in Texas has no seal and no official clerk.

27 In testimony whereof, witness my official hand in the City of Dallas, this the 15th day of April, A. D. 1913.

J. P. COOPER,
Justice of the Peace, Precinct No. 7, Dallas County, Texas.

Return.

UNITED STATES OF AMERICA:

Justice Court, Precinct No. 7, Dallas County, Texas.

In obedience to the commands of the within writ I hereby transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In testimony whereof, I herewith subscribe my official signature, in the City of Dallas, this the 15th day of April, A D. 1913.

J. P. COOPER,
Justice of the Peace, Precinct No. 7,
Dallas County, Texas.

Certificate of County Clerk.

STATE OF TEXAS,
County of Dallas:

I, J. E. Record, County Clerk in and for Dallas County, Texas, do hereby certify that J. P. Cooper, whose name is attached to the foregoing certificate and return, is the duly qualified and acting Justice of the Peace in and for Justice Precinct No. 7, Dallas County, Texas, and that Justice Courts in Texas have no seal.

In testimony whereof, witness my hand and seal of office, in the City of Dallas, Texas, this the 15th day of April, A. D. 1913.

[Seal County Court of Dallas County, Texas.]

J. E. RECORD,
County Clerk, Dallas County, Texas.

[Endorsed:] No. —. In the Supreme Court of the United States. The Missouri, Kansas & Texas Railway Company of Texas, Pl't'ff in Error, vs. L. C. Cade, Def't in Error. Transcript of Record.

Endorsed on cover: File No. 23,648. Texas, Dallas County, Justice Court, Precinct No. 7. Term No. 522. The Missouri, Kansas & Texas Railway Company of Texas, plaintiff in error, vs. L. C. Cade. Filed April 21st, 1913. File No. 23,648.

3

FILED
JAN 8 1914
JAMES D. MAHER
CLERK

IN THE

Supreme Court of the United States

October Term, 1913.

THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS,
Plaintiff in Error,
vs.
L. C. CADE,
Defendant in Error.

No. 527

THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS,
Plaintiff in Error,
vs.
S. O. HARRIS,
Defendant in Error.

No. 604

ON WRIT OF ERROR TO THE JUSTICE COURTS OF PRECINCT NO. 7, DALLAS COONTY, TEXAS, AND PRECINCT NO. 6, HOPKINS COUNTY, TEXAS.

MOTION OF PLAINTIFF IN ERROR TO ADVANCE.

ALEX. S. COKE,
A. H. McKNIGHT,
Attorneys for Plaintiff in Error.

JOSEPH M. BRYSON,
BRITTON & GRAY,
Of Counsel.

W. M. Warlick, Law P., 510½ Main St., Dallas, Phone M. 1091.

IN THE

Supreme Court of the United States

October Term, 1913.

THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS,
Plaintiff in Error,
vs.
L. C. CADE,
Defendant in Error.

No. 527

THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS,
Plaintiff in Error,
vs.
S. O. HARRIS,
Defendant in Error.

No. 604

ON WRIT OF ERROR TO THE JUSTICE COURTS OF PRECINCT NO. 7, DALLAS COUNTY, TEXAS, AND PRECINCT NO. 6, HOPKINS COUNTY, TEXAS.

MOTION TO ADVANCE.

Plaintiff in error moves the Court to advance the above entitled causes for hearing at the present term of Court.

The first case was filed to recover wages in the sum of $10.75 and an attorney's fee of $9.00, and the other to

recover $3.50 account the loss of a shipment from a point in the State of Missouri to a point in the State of Texas, and an attorney's fee of $10.00. The attorney's fees were claimed under an Act of the Legislature of Texas, approved March 13, 1909, entitled:

> "AN ACT to regulate the presentation and collection of claims for personal services or for labor rendered, or for material furnished, or for overcharges in freight or express, or for any claim for lost or damaged freight, or for stock killed or injured by any person or corporation, against any person or corporation doing business in this State, and providing a reasonable amount of attorney's fees to be recovered, in cases where the amount of such claim shall not exceed two hundred ($200.00) dollars, and declaring an emergency."

Judgment was rendered in each case for the full amount claimed and the judgments were final under the laws of Texas, no other State court having the power to review the same. Writs of error were allowed from this Court.

No contest is made as to the recovery of the wages and damages. The questions involved relate exclusively to the attorney's fees. They are whether the said Act violates Section 1 of the Fourteenth Amendment to the Constitution of the United States and is, at least in part, in conflict with subdivision 3, Section 8, Article 1 of the Federal Constitution and with the Act to Regulate Commerce, approved February 4, 1887, and the acts amendatory thereof and supplementary thereto. These are under the record questions of pure law.

In view of the fact that an attorney's fee has been awarded against plaintiff in error in another case under the same Act, in which it has applied for a writ of error from this Court;

that cases involving the validity of the act are constantly arising; and that the granting of a writ of error in each such case will burden the docket of the court with cases in which the amount in controversy is small, perhaps more frequently than not being less than $20.00, it is respectfully requested that these cases be advanced for as early hearing as will suit the convenience of the court, not, however, less than thirty days from the submission of this motion, and that this motion be submited January 12, 1914.

ALEX. S. COKE,
A. H. McKNIGHT,
Attorneys for Plaintiff in Error.

JOSEPH M. BRYSON,
BRITTON & GRAY,
Of Counsel.
December 31, 1913.

Service of a copy of the above motion is accepted, and I agree that the motion may be submitted January 12, 1914.

.....
Attorney for Defendant in Error, L. C. Cade.
January————, 1914.

Service of a copy of the above motion is accepted, and I agree that the motion may be submitted January 12, 1914.

.....
Attorney for Defendant in Error, S. O. Harris.
January————, 1914.

9

Office Supreme Court, U. S.
FILED
FEB 9 1914
JAMES D. MAHER
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS,
Plaintiff in Error,
vs.
L. C. CADE,
Defendant in Error.
} No. 522.

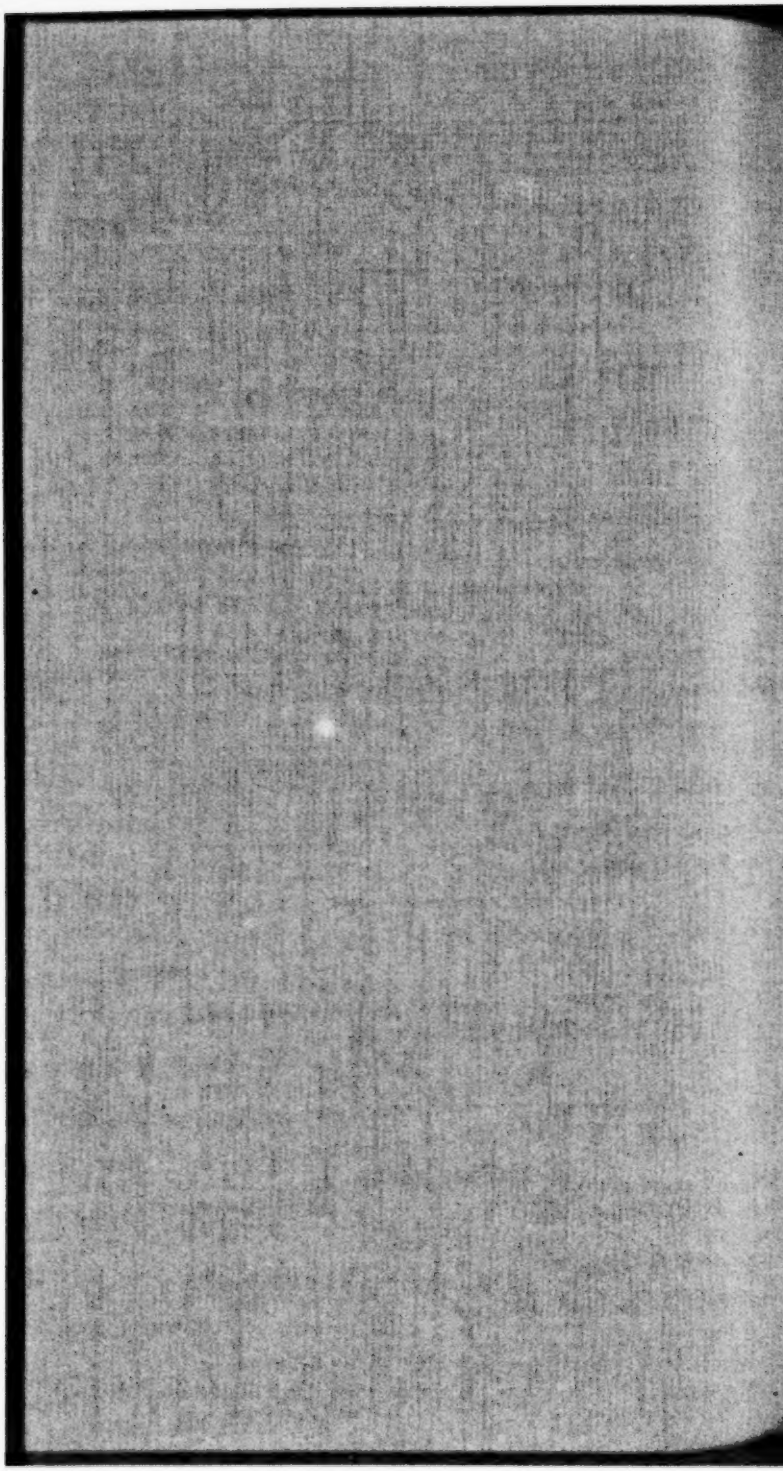
ON WRIT OF ERROR TO THE JUSTICE COURT OF PRECINCT NO. 7, DALLAS COUNTY, TEXAS.

BRIEF FOR PLAINTIFF IN ERROR.

ALEXANDER S. COKE,
A. H. McKNIGHT,
Attorneys for Plaintiff in Error.

JOSEPH M. BRYSON,
A. B. BROWNE,
Of Counsel.

St. Louis Law Printing Co., Printers' Bldg., North and Walnut. Bell, Main 1818.



INDEX.

	Page
Statement	1–6
Citation	1
Answer of plaintiff in error	2
Statement of facts	2
L. C. Cade	
S. A. Charlton	
W. R. Hinckley	
Judgment	2
Assignments of error	3
Statute involved	5
Brief of argument	7–27
The equal protection of the laws	7
Due process of law	21
Validity of act as affected by Interstate Commerce	23

Table of Cases.

Adams Express Co. v. Croninger, 226 U. S. 491	24
Adams Express Co. v. City of New York	24
A. T. & S. F. Ry. Co. v. Matthews, 174 U. S. 96	11
Atlantic Coast Line v. Riverside Mills, 219 U. S. 186	24
Barbier v. Connolly, 113 U. S. 27	21
Barrett v. Indiana, 229 U. S. 30	12
Blake v. McClung, 172 U. S. 259	10
Bradley v. Richmond, 227 U. S. 481	22
Central of Georgia R. R. Co. v. Murphey, 196 U. S. 194	19
C. R. I. & P. Ry. Co. v. Hardwick Elevator Co., 226 U. S. 426	24
Chicago, Milwaukee & St. Paul Ry. Co. v. J. F. Polt	22

Connolly v. Union Sewer Pipe Co., 184 U. S. 540..11, 14
Cotting v. Kansas City Stock Yards Co., 183 U. S. 79.....11, 14, 22
El Paso & N. E. R. R. Co. v. Gutierrez, 215 U. S. 97..... 25
Employers Liability Cases, The, 207 U. S. 501.... 25
Fidelity Mutual Life Association v. Mettler, 185 U. S. 308..... 20
Ft. Worth & Denver City Ry. Co. v. Lloyd, 132 S. W. 899..... 7
G. C. & S. F. Ry. Co. v. Dennis, 224 U. S. 503..... 7
G. C. & S. F. Ry. Co. v. Ellis, 165 U. S. 150.....7, 10, 11
G. C. & S. F. Ry. Co. v. Hefley, 158 U. S. 98..... 24
G. C. & S. F. Ry. Co. v. Thorn, 227 U. S. 675..... 7
Hale v. Henkel, 201 U. S. 76..... 10
Illinois Central R. R. Co. v. McKendree, 203 U. S. 529 25
Interstate Commerce Commission v. L. & N. R. R. Co., 227 U. S. 88..... 22
Kansas City Southern Ry. Co. v. Carl, 227 U. S. 639 24
M. K. & T. Ry. Co. v. Harriman, 227 U. S. 657.... 24
M. K. & T. Ry. Co. of Tex. v. Mahaffey, 150 S. W. 881 7
Missouri Pacific Ry. Co. v. Humes, 115 U. S. 512.. 20
Mondou v. N. Y. N. H. & H. R. R. Co., 223 U. S. 1. 24
Northern Pacific Ry. Co. v. Washington, 222 U. S. 370 24
St. L. I. M. & So. Ry. Co. v. Wynne, 224 U. S. 354 22
St. L. & S. F. Ry. Co. v. Mathews, 165 U. S. 1.... 20
Seaboard Air Line v. Seegers, 207 U. S. 73..... 20
Simpson v. Shepard, 230 U. S. 352..... 24
Sinnot v. Davenport, 63 U. S. 242..... 24
Smyth v. Ames, 169 U. S. 522..... 10

Southern Railway Co. v. Greene, 216 U. S. 400 . . 11, 14
Southern Railway Co. v. Reid, 222 U. S. 424 24
Southern Railway Co. v. Reid & Beam, 222 U. S. 444 24
U. S. v. Reese, 92 U. S. 221 26
Yazoo & Mississippi Valley R. R. Co. v. Jackson Vinegar Co., 226 U. S. 217 20
Yick Wo v. Hopkins, 118 U. S. 356 . . . . . 18, 22

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS,
Plaintiff in Error,
vs.
L. C. CADE,
Defendant in Error.
} No. 522.

ON WRIT OF ERROR TO THE JUSTICE COURT OF PRECINCT NO. 7, DALLAS COUNTY, TEXAS.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

This suit was filed to recover wages in the sum of $10.75 and an attorney's fee of $9.00 (Rec., p. 1). The attorney's fee was claimed under an Act of the Legislature of Texas approved March 13, 1909, entitled:

> "An Act to regulate the presentation and collection of claims for personal services or for labor

rendered, or for material furnished, or for overcharges in freight or express, or for any claim for lost or damaged freight, or for stock killed or injured by any person or corporation, against any person or corporation doing business in this State, and providing a reasonable amount of attorney's fees to be recovered in cases where the amount of such claims shall not exceed two hundred ($200) dollars, and declaring an emergency."

Plaintiff in error urged the invalidity of this Act on the grounds that it denies to those subject thereto the equal protection of the laws and deprives them of their property without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States; and that the Act in part conflicts with Subdivision 3, Section 8, Article I of the Federal Constitution and the Act to Regulate Commerce, approved February 4, 1887, and the Acts amendatory thereof and supplementary thereto, and to this extent is void, and since the good, if any, and the bad in it are inseparable the Act must fail in whole (Rec., p. 4). These contentions were overruled by the Court and judgment was rendered in favor of defendant in error for the full amount claimed, including the attorney's fee of $9.00 (Rec., p. 6).

Under the Constitution and laws of Texas no appeal lies from a decision of the Justice Court in a case involving less than $20.00 nor is there any method provided for reviewing the decisions in such cases. The judgment rendered against plaintiff in error was therefore final.

That part of the judgment relating to wages is not questioned. The contentions here made relate solely

to the attorney's fee awarded and the validity of the Act upon which it is based.

A writ of error from this Court was allowed, to operate as a *supersedeas*, by Associate Justice Lamar (Rec., p. 12), and writ of error bond and assignments of error were duly filed, the latter reading as follows:

ASSIGNMENTS OF ERROR.

1. The said Justice Court erred in overruling and in not sustaining plaintiff in error's first special exception to that part of the demand claiming an attorney's fee, said special exception reading as follows:

"First. Because said Act of the Legislature violates that provision of Section 1 of the Fourteenth Amendment to the Constitution of the United States which guarantees the equal protection of the law."

2. The said Justice Court erred in overruling and in not sustaining plaintiff in error's second special exception to that part of the demand claiming an attorney's fee, said exception reading as follows:

"Second. Because said Act of the Legislature violates that provision of Section 1 of the Fourteenth amendment to the Constitution of the United States which declares that no State shall deprive any person of life, liberty, or property, without due process of law."

3. The said Justice Court erred in overruling and in not sustaining plaintiff in error's third special exception to that part of the demand claiming an attorney's fee, said exception reading as follows:

"Third. Because said Act of the Legislature is in part a regulation of, a burden upon and an interference with interstate commerce, contrary to

Subdivision 3, Section 8, Article I of the Constitution of the United States and the Act to Regulate Commerce, approved February 4, 1887, and the Acts amendatory thereof and supplementary thereto, passed by Congress pursuant to said subdivision, and since the good, if any, and the bad in the Act are inseparable, the whole Act must fail."

4. The said Justice Court erred in holding the statute upon which the claim for an attorney's fee is based valid, same being entitled:

"An Act to regulate the presentation and collection of claims for personal services or for labor rendered, or for material furnished, or for overcharges in freight or express, or for any claim for lost or damaged freight, or for stock killed or injured by any person or corporation, against any person or corporation doing business in this State, and providing a reasonable amount of attorney's fees to be recovered, in cases where the amount of such claims shall not exceed two hundred ($200) dollars, and declaring an emergency", and now forming Articles 2178 and 2179 of the Texas Revised Civil Statutes of 1911, as against plaintiff in error's objection thereto, that said statute is void because in conflict with that provision of Section 1 of the Fourteenth Amendment to the Constitution of the United States which prohibits the states from denying to any person within their jurisdiction the equal protection of the laws.

5. The said Justice Court erred in holding the aforesaid statute upon which the claim for an attorney's fee is based valid as against the objection of plaintiff in error that the said statute is void because in conflict with that provision of Section 1 of the Fourteenth Amendment to the Constitution of the United States which prohibits the states

from depriving any person of property without due process of law.

6. The said Justice Court erred in holding the aforesaid statute upon which the claim for an attorney's fee is based valid as against the objection of plaintiff in error that the said statute is void because it in part conflicts with Subdivision 3, Section 8, Article I of the Constitution of the United States, which confers upon Congress the power to regulate commerce with foreign nations and among the several states, and the Act to Regulate Commerce, approved February 4, 1887, and the Acts amendatory thereof and supplementary thereto, and since the statute is indivisible and that which is good, if any, can not be separated from that which is bad, it must fail in whole.

7. The said Justice Court erred in holding the aforesaid attorney's fee statute valid, and in rendering judgment in favor of defendant in error for an attorney's fee based thereon (Rec., pp. 8-9).

STATUTE INVOLVED.

Article 2178. Hereafter, any person in this state having a valid, *bona fide* claim against any person or corporation doing business in this state, for personal services rendered or for labor done, or for material furnished, or for overcharges on freight or express, or for any claim for lost or damaged freight, or for stock killed or injured by such person or corporation, its agents or employes, may present the same to such person or corporation or to any duly authorized agent thereof, in any county where suit may be instituted for the same; and if, at the expiration of thirty days after the presentation of such claim, the same has not been paid or satisfied, he may immediately institute suit thereon in the proper court; and if he

shall finally establish his claim, and obtain judgment for the full amount thereof, as presented for payment to such person or corporation in such court, he shall be entitled to recover the amount of such claim and all costs of suit, and, in addition thereto, a reasonable amount as attorney's fees; provided, he has an attorney employed in the case, not to exceed twenty dollars, to be determined by the court or jury trying the case.

Art. 2179. Nothing in this chapter shall be construed to repeal, or in any manner affect, any provision of the law now in force, giving a remedy to persons having claims of the character mentioned in this chapter, but the same shall be considered as cumulative of all other remedies given to such person or persons.

BRIEF OF ARGUMENT.

I.

The Act of the Legislature in question is void because in conflict with that provision of Section 1 of the Fourteenth Amendment to the Constitution of the United States which guarantees the equal protection of the laws.

Since this Court remanded *G. C. & S. F. Ry. Co. v. Dennis*, 224 U. S. 503, and *G. C. & S. F. Ry. Co. v. Thorn*, 227 U. S. 675, each involving the Act of the Texas Legislature here under consideration, to the State Courts for further handling in accordance with the opinion of the Forth Worth Court of Civil Appeals in *Ft. Worth & Denver City Ry. Co. v. Lloyd*, 132 S. W. 899, the Supreme Court of Texas has reversed its ruling in refusing a writ of error in the last mentioned case and upheld the Act under the Texas Constitution in *The Missouri, Kansas & Texas Ry. Co. of Texas v. Mahaffey*, 150 S. W. 881. It becomes necessary, therefore, to decide whether the Act conflicts with the Federal Constitution.

An Act of the same general character was condemned by this Court in *G. C. & S. F. Ry. Co. v. Ellis*, 165 U. S. 150, where the principles that control the case are fully and clearly stated. We place the material parts of the two acts—one passed in 1889 and the other in 1909—in parallel columns that their points of similarity and their points of difference may be readily noted:

Act of 1889.

Caption.

An act to regulate the presentation and collection of claims for personal services or labor, or for damages or for overcharge on freight against railway corporations doing business in this state in case where the amount claimed does not exceed fifty dollars, and to fix the measure of damages recoverable in certain of such cases.

Section 1.

That after the time when this act shall take effect any person in this state having a valid, *bona fide* claim for personal services rendered or labor done, or for damages, or for overcharges on freight, or claims for stock killed or injured by the train of any railway company, provided that such claims for stock killed or injured shall be presented to the agent of the company

Act of 1909.

Caption.

An Act to regulate the presentation and collection of claims for personal services or for labor rendered, or for material furnished, or for overcharges in freight or express, or for any claim for lost or damaged freight, or for stock killed or injured by any person or corporation, against any person or corporation doing business in this State, and providing a reasonable amount of attorney's fees to be recovered, in cases where the amount of such claims shall not exceed two hundred ($200) dollars, and declaring an emergency.

Section 1.

Hereafter, any person in this state having a valid, *bona fide* claim against any person or corporation doing business in this state, for personal services rendered or for labor done, or for material furnished, or for overcharges on freight or express, or for any claim for lost or damaged freight, or for stock killed or injured by such person or corporation, its agents or

nearest to the point where such stock was killed or injured, against any railway corporation operating a railroad in this state, and the amount of such claim does not exceed fifty dollars, may present the same verified by his affidavit, for payment to such corporation by filing it with any station agent of such corporation in any county where suit may be instituted for the same, and if, at the expiration of thirty days after such presentation, such claim has not been paid or satisfied, he may immediately institute suit thereon in the proper court; and if he shall finally establish his claim, and obtain judgment for the full amount thereof, as presented for payment to such corporation in such court, or any court to which the suit may have been appealed, he shall be entitled to recover the amount of such claim and all costs of suit, and in addition thereto all reasonable attorney's fees, provided he has an attorney employed in his case, not to exceed ten dollars, to be assessed and awarded by the Court or jury trying the issue.

employes, may present the same to such person or corporation or to any duly authorized agent thereof, in any county where suit may be instituted for the same; and if, at the expiration of thirty days after the presentation of such claim, the same has not been paid or satisfied, he may immediately institute suit thereon in the proper court; and if he shall finally establish his claim, and obtain judgment for the full amount thereof, as presented for payment to such person or corporation in such court, he shall be entitled to recover the amount of such claim and all costs of suit, and, in addition thereto, a reasonable amount as attorney's fees; provided, he has an attorney employed in the case, not to exceed twenty dollars, to be determined by the Court or jury trying the case.

Substantially the only difference between the two Acts, it will be seen, is that the first is limited to railway corporations while the Act of 1909 applies to all persons and corporations who owe debts of the classes enumerated. There are minor differences—for instance, the last Act includes some claims not covered by the first, there is a difference between the amount of attorney's fee that can be recovered, and the limit for amounts claimed under the two Acts is different—but these do not call for the application of different principles or make necessary a different application of the same principles. The precise question left undetermined by the case cited, then, is whether there is a reasonable basis for the classification which imposes an attorney's fee upon persons, natural or artificial, against whom claims are presented and judgments recovered for labor done, for material furnished, for overcharges on freight or express, for loss or damage on freight, or for stock killed or injured, where the amount demanded does not exceed $200.00, while persons against whom claims of other classes are presented and judgments recovered under similar circumstances are not so burdened.

Does the fact that this Act applies to all persons against whom claims of the classes named are presented distinguish it from an act applicable alone to railway corporations? Clearly not. A brief consideration will make this plain.

It is well settled that corporations are persons within the provisions of the Fourteenth Amendment (*G. C. & S. F. Ry. Co. v. Ellis*, 165 U. S. 154; *Smyth v. Ames*, 169 U. S. 522; *Blake v. McClung*, 172 U. S. 259, and *Hale v. Henkel*, 201 U. S. 76), and that while State Legislatures, in passing laws, may classify, purely arbi-

trary action cannot be sustained by calling it classification; there must be a reasonable basis for the classification, which means that the discrimination must be based upon matters which have some relation to the object sought to be accomplished (*G. C. & S. F. Ry. Co. v. Ellis*, 165 U. S. 150; *A. T. & S. F. Ry. Co. v. Matthews*, 174 U. S. 96; *Cotting v. Kansas City Stock Yards Co.*, 183 U. S. 79; *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, and *Southern Ry. Co. v. Greene*, 216 U. S. 400).

The principle is thus stated in the Ellis case (page 155):

> " * * * yet it is equally true that such classification cannot be made arbitrarily. The State may not say that all white men shall be subjected to the payment of the attorneys' fees of parties successfully suing them and all black men not. It may not say that all men beyond a certain age shall be alone thus subjected, or all men possessed of a certain wealth. These are distinctions which do not furnish any proper basis for the attempted classification. That must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis."

Again (page 165):

> "It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection."

And as follows in *Railway Company v. Matthews, supra* (page 104):

> "On the other hand, it is also true that the equal protection guaranteed by the Constitution forbids the legislature to select a person, natural or artificial, and impose upon him or it burdens and liabilities which are not cast upon others similarly situated. It cannot pick out one individual, or one corporation, and enact that whenever he or it is sued the judgment shall be for double damages, or subject to an attorney fee in favor of the plaintiff, when no other individual or corporation is subjected to the same rule. Neither can it make a classification of individuals or corporations which is purely arbitrary, and impose upon such class special burdens and liabilities. Even where the selection is not obviously unreasonable and arbitrary, if the discrimination is based upon matters which have no relation to the object sought to be accomplished, the same conclusion of unconstitutionality is affirmed."

Any number of quotations might be made, but, as was said in *Barrett v. Indiana*, 229 U. S. 30:

> "This Court has had such frequent occasion to consider this matter that extended discussion is not necessary now."

Now, if we substitute "certain classes" for "a certain class", it may be said of the Act of 1909 as was said by this Court of the Act of 1889 (page 153):

> "The act singles out a certain class of debtors and punishes them when for like delinquencies it punishes no others. They are not treated as other debtors, or equally with other debtors. They cannot appeal to the courts as other litigants under

like conditions and with like protection. If litigation terminates adversely to them, they are mulcted in the attorney's fees of the successful plaintiff; if it terminates in their favor, they recover no attorney's fees. It is no sufficient answer to say that they are punished only when adjudged to be in the wrong. They do not enter the courts upon equal terms. They must pay attorney's fees if wrong; they do not recover any if right; while their adversaries recover if right and pay nothing if wrong. In the suits, therefore, to which they are parties they are discriminated against, and are not treated as others. They do not stand equal before the law. They do not receive its equal protection."

True, in that case the classification was based upon the character of the debtors, while here it is based upon the character of the claims. But that is immaterial. It still remains that some debtors under given circumstances are required to pay attorney's fees while others are not, and the question is whether there is reasonable ground for the discrimination.

There is none. The Act is unequal in both its benefits and its burdens. The benefits, for instance, are conferred upon natural persons only. Why this difference? What reason is there for allowing a natural person to recover an attorney's fee in connection with a loss and damage claim, for example, while denying this right to a corporation having a claim of the same character and for the same amount? But passing from the benefits to the burdens: Why subject to the payment of attorney's fees persons who owe claims for labor or material and not so subject persons who owe claims for tools or supplies? Why should the carrier who makes an overcharge on freight or express be

made to pay a penalty while none is exacted from the carrier who makes an overcharge in passenger fares or on baggage? Why compel the carrier who loses or damages freight in transit to pay an attorney's fee and, at the same time, exempt a carrier who loses or damages express or baggage? Why penalize the person who kills or injures the stock of another while permitting persons who injure or destroy any other class of property to go free? Why mulct in attorney's fees the person who owes $200.00 or less and not the person who owes $201.00 or more? Or, since the statute is simply one imposing a penalty for a failure to pay debts, why subject to the payment of attorney's fees debtors of certain classes and exempt all other debtors? Wherein rests the obligation to pay upon one class more than upon another?

The following cases, out of the many which might be selected, well illustrate the application of the principle for which we contend: *Cotting v. Kansas City Stock Yards Co.*, 183 U. S. 79; *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, and *Southern Railway Co. v. Greene*, 216 U. S. 400.

In *Cotting v. Kansas City Stock Yards Company* the question was whether an act of Kansas relating to stock yards, regulating their charges, etc., was in violation of the Fourteenth Amendment, in that it applied only to the Kansas City Stock Yards Company. The Court held the statute invalid. After reviewing a number of authorities it said (page 111):

> "But while recognizing to the full extent the impossibility of an imposition of duties and obligations mathematically equal upon all, and also recognizing the right of classification of industries and occupations, we must nevertheless always re-

member that the equal protection of the laws is guaranteed, and that such equal protection is denied when upon one of two parties engaged in the same kind of business and under the same conditions burdens are cast which are not cast upon the other. There can be no pretense that a stock yard which receives 99 head of cattle per day a year is not doing precisely the same business as one receiving 101 head of cattle per day each year. It is the same business in all its essential elements, and the only difference is that one does more business than the other. But the receipt of an extra two head of cattle per day does not change the character of the business. If once the door is opened to the affirmance of the proposition that a State may regulate one who does much business, while not regulating another who does the same but less business, then all significance in the guarantee of the equal protection of the laws is lost, and the door is opened to that inequality of legislation which Mr. Justice Catron referred to in the quotation above made. This statute is not simply legislation which in its indirect results affects different individuals or corporations differently, nor with those in which a classification is based upon inherent differences in the character of the business, but is a positive and direct discrimination between persons engaged in the same class of business and based simply upon the quantity of business which each may do. If such legislation does not deny the equal protection of the laws, we are unable to perceive what legislation would. We think therefore that the principle of the decision of the Supreme Court of Kansas in *State v. Haun*, *supra*, is not only sound, but is controlling in this case, and that the statute must be held unconstitutional, as in conflict with the equal protection clause of the Fourteenth Amendment."

Connolly v. Union Sewer Pipe Company involved the validity of the Anti-Trust Statute of Illinois, Section 9 of which provided: "The provisions of this act shall not apply to agricultural products or live stock while in the hands of the producer or raiser." It was contended that the act was void because of this exemption, and the contention was sustained. In disposing of the question the Court said (page 558):

> "What may be regarded as a denial of the equal protection of the laws is a question not always easily determined, as the decisions of this Court and of the highest courts of the States will show. It is sometimes difficult to show that a State enactment, having its source in a power not controverted, infringes rights protected by the National Constitution. No rule can be formulated that will cover every case. But upon this general question we have said that the guarantee of the equal protection of the laws means 'that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and in like circumstances'. *Missouri v. Lewis*, 101 U. S. 22, 31. We have also said: 'The Fourteenth Amendment, in declaring that no State "shall deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws", undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the

courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses'. *Barbier v. Connolly*, 113 U. S. 27, 31. This language was cited with approval in *Yick Wo v. Hopkins*, 118 U. S. 356, 369, in which it was also said that 'the equal protection of the laws is a pledge of the protection of equal laws'. In *Hayes v. Missouri*, 120 U. S. 68, 71, we said that the Fourteenth Amendment required that all persons subject to legislation limited as to the objects to which it is directed, or by the territory within which it is to operate, 'shall be treated alike, under like circumstances and considerations, both in the privileges conferred, and in the limitations imposed'. 'Due process of law and the equal protection of the laws', this Court has said, 'are secured, if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government'. *Duncan v. Missouri*, 152 U. S. 377, 382. Many other cases in this court are to the like effect."

In *Southern Railway Company v. Greene*, which involved a statute of Alabama imposing certain taxes upon foreign corporations doing business in the State, the Court announced the general doctrine that a classification must be based upon some real and substantial distinction which bears a reasonable and just relation

to the things in respect to which it is imposed, and then proceeded (page 417):

> "It is averred in the complaint, and must be taken as admitted, that there are other corporations of a domestic character in Alabama carrying on the railroad business in precisely the same way as the plaintiff. It would be a fanciful distinction to say that there is any real difference in the burden imposed because the one is taxed for the privilege of a foreign corporation to do business in the State and other for the right to be a corporation. The fact is that both corporations do the same business in character and kind, and under the statute in question a foreign corporation may be taxed many thousands of dollars for the privilege of doing, within the State, exactly the same business as the domestic corporation is permitted to do by a tax upon its privilege, amounting to only a few hundred dollars. We hold, therefore, that to tax the foreign corporation for carrying on business under the circumstances shown, by a different and much more onerous rule than is used in taxing domestic corporations for the same privilege, is a denial of the equal protection of the laws, and the plaintiff being in position to invoke the protection of the Fourteenth Amendment, that such attempted taxation under a statute of the states, does violence to the Federal Constitution."

This Act is equally as arbitrary as any of those. Its object being to compel the prompt payment of debts, to be valid, it should apply to all debtors. Such statutes do not come within the scope of police regulations (*Railway Company v. Ellis, supra*). But if it were otherwise, the police power must be exercised with respect to the right of equal protection guaranteed by the Federal Constitution. *Yick Wo v. Hopkins*, 118 U. S. 356;

Cotting v. Kansas City Stock Yards Co., supra; Central of Georgia R. R. Co. v. Murphy, 196 U. S. 194.

"It is of course proper (again quoting from *Railway Company v. Ellis*) that every debtor should pay his debts, and there might be no impropriety in giving to every successful suitor attorney's fees. Such a provision would bear a reasonable relation to the delinquency of the debtor, and would certainly create no inequality of right or protection. But before a distinction can be made between debtors, and one be punished for a failure to pay his debts, while another is permitted to become in like manner delinquent without any punishment, there must be some difference in the obligation to pay, some reason why the duty of payment is more imperative in the one instance than in the other."

* * * * * * *

"Statutes have been sustained giving special protection to the claims of laborers and mechanics, but no such idea underlies this legislation. It does not aim to protect the laborer or the mechanic alone, for its benefits are conferred upon every individual in the State, rich or poor, high or low, who has a claim of the character described. It is not a statute for the protection of particular classes of individuals supposed to need protection", but for the punishment of certain debtors on account of their delinquency.

"Neither can it be sustained as a proper means of enforcing the payment of small debts and preventing any unnecessary litigation in respect to them, because it does not impose the penalty in all cases where the amount in controversy is within the limit named in the statute."

Nor can the Act be sustained because of a special

duty imposed, as was the case in *Missouri Pacific Ry. Co. v. Humes*, 115 U. S. 512, and *St. L. & S. F. Ry. Co. v. Matthews*, 165 U. S. 1. It applies alike to persons upon whom special duties have been imposed and to others not similarly situated.

The classification is not based upon the nature of the business transacted. A number of the claims, it is true, could arise only in connection with the business of common carriers, but others have no connection whatever with that business or with any other special business. Defendant in error's claim, being for wages, is of the latter class. The statute, therefore, is clearly different from those sustained in *Seaboard Air Line v. Seegers*, 207 U. S. 73; and *Yazoo & Mississippi Valley R. R. Co. v. Jackson Vinegar Co.*, 226 U. S. 217.

Finally, the Act cannot be sustained as imposing a burden in connection with special privileges conferred, upon the principle announced in *Fidelity Mutual Life Association v. Mettler*, 185 U. S. 308, and other cases of that class, for it applies to natural persons as well as to corporations; to persons who have received no special privileges as well as to persons who are privileged.

Indeed, to quote from *Railway Company v. Ellis* again, the statute arbitrarily singles out certain debtors and punishes them for a failure to perform certain duties—

> "—duties which are equally obligatory upon all debtors; a punishment not visited by reason of the failure to comply with any proper police regulations, or for the protection of the laboring classes or to prevent litigation about trifling matters, or in consequence of any special corporate privileges bestowed by the State. Unless the legislature may arbitrarily select one corporation or one class of

corporations, one individual or one class of individuals, and visit a penalty upon them which is not imposed upon others guilty of like delinquency this statute cannot be sustained.

"But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this."

The Court in fact will look beyond the mere letter of a law to the conditions actually existing as affecting its application for the purpose of prohibiting arbitrary action under the guise of regulation or classification. *Yick Wo v. Hopkins, supra.*

Considered from any standpoint, "there is no fair reason for the law that would not require with equal force its extension to others whom it leaves untouched." It follows that the Act cannot be sustained.

II.

The Act of the Legislature in question violates that provision of Section 1 of the Fourteenth Amendment to the Constitution of the United States which prohibits the taking of property without due process of law.

Much of what is stated under the First Proposition is applicable here. We wish simply to add that every person under our constitutional guarantees has the right to be governed by general rules, and when particular individuals or classes of individuals are singled out and are subjected to one set of rules when other persons or classes of persons under similar circumstances are not, or when any class of persons are subjected to arbitrary action, those so burdened are deprived of their liberty and property without due process of law. *Barbier v. Connolly*, 113 U. S. 27; *Yick Wo*

v. Hopkins, 118 U. S. 356; *Cotting v. Kansas City Stock Yards Co.*, 183 U. S. 109; *St. L. I. M. & So. Ry. Co. v. Wynne*, 224 U. S. 354; *Interstate Commerce Commission v. L. & N. Ry. Co.*, 227 U. S. 88; *Bradley v. Richmond*, 227 U. S. 481.

In this connection, we call the Court's attention to the case of *The Chicago, Milwaukee & St. Paul Railway Company v. J. F. Polt*, decided by this Court on January 26, 1914, the opinion being by Mr. Justice Holmes. It is short and we quote it in full:

> "This was a suit against the plaintiff in error for loss of property destroyed by fire communicated from its locomotive engine. A statute of South Dakota, after making the railroad company absolutely responsible in such cases, goes on to make it liable for double the amount of damage actually sustained unless it pays the full amount within sixty days from notice. If, within sixty days, it shall 'offer in writing to pay a fixed sum, being the full amount of the damages sustained and the owner shall refuse to accept the same, then in any action thereafter brought for such damages when such owner recovers a less sum as damages than the amount so offered, then such owner shall recover only his damages, and the railway company shall recover its costs' (*South Dakota Laws*, 1907, *c.* 215). The plaintiff got a verdict for $780. The railroad company had offered $500; less, that is, than the amount of the verdict, while the plaintiff, on the other hand, demanded more. In his demand, his declaration and his testimony, he set the damage at $838.20. A judgment for double damages was affirmed by the Supreme Court of the State (26 *So. Dak.* 378).
>
> "The defendant in error presented no argument, probably because he realized that under the recent

decisions of this Court the judgment could not be sustained. No doubt, the States have a large latitude in the policy that they will pursue and enforce, but the rudiments of fair play required by the Fourteenth Amendment are wanting when a defendant is required to guess rightly what a jury will find, or pay double if that body sees fit to add one cent to the amount that was tendered, although the tender was obviously futile because of an excessive demand. The case is covered by *St. Louis, Iron Mountain & Southern Ry. Co. v. Wynne*, 224 U. S. 354. It is not like those in which a moderate penalty is imposed for failure to satisfy a demand found to be just (*Yazoo & Mississippi Valley R. R. Co. v. Jackson Vinegar Co.*, 226 U. S. 217)."

III.

The Act of the Legislature in question is in part a regulation of, a burden upon and an interference with Interstate Commerce, contrary to Subdivision 3, Section 8, Article I of the Constitution of the United States, and is in conflict with the Act to Regulate Commerce approved February 4, 1887, and the Acts amendatory thereof and supplementary thereto, and to that extent is void, and since the good, if any, and the bad in it are so intermingled that the one cannot be separated from the other, the Act must fail in whole.

The provisions of the Act relating to overcharge and loss and damage claims, are not confined to shipments wholly between points within the State. They apply as well to interstate shipments.

It is a violation of the Act to Regulate Commerce for a carrier intentionally to make a charge above the legal rate on an interstate shipment of freight or express, and for such overcharge the shipper has his remedy,

including the right to recover a reasonable attorney's fee (*Section 8 of the Act to Regulate Commerce* as amended June 18, 1910). The provision relating to such fee, however, is that it shall be reasonable and shall "be fixed by the Court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case." This provision is different from that of the Texas statute. But, whether the overcharge be intentional or not, Congress has taken full control of rate making and charging. (*Southern Railway Co. v. Reid*, 222 U. S. 438). Again, the Federal law, within certain limits, gives the shipper whose freight or express is lost or damaged in transit a cause of action, but this does not include the right to recover an attorney's fee. *Atlantic Coast Line R. R. Co. v. Riverside Mills*, 219 U. S. 186.

One of the Acts—the two being in conflict—must yield. It is not now an open question that the Federal law supersedes or prevails over State enactments. This question has been before the Court so often and so recently as to make it unnecessary to do more than cite the cases. *Sinnot v. Davenport*, 63 U. S. 242; *G. C. & S. F. Ry. Co. v. Hefley*, 158 U. S. 98; *Northern Pacific Ry. Co. v. Washington*, 222 U. S. 370; *Southern Railway Co. v. Reid, supra; Southern Railway Co. v. Reid & Beam*, 222 U. S. 444; *Mondou v. N. Y. N. H. & H. R. R. Co.*, 223 U. S. 1; *C. R. I. & P. Ry. Co. v. Hardwick Elevator Co.*, 226 U. S. 426; *Adams Express Co. v. Croninger*, 226 U. S. 491; *Kansas City Southern Railway Co. v. Carl*, 227 U. S. 639; *M. K. & T. Ry. Co. v. Harriman*, 227 U. S. 657; *Simpson et al v. Shepard*, 230 U. S. 352; *Adams Express Co. v. The City of New York*, decided by this Court January 5, 1914.

The Act being void in part, the question remains, can

any portion of it stand? Is that which is valid, if any, separable from that which is invalid? This question should be answered in the negative. *The Employers Liability Cases*, 207 U. S. 501; *Illinois Central R. R. Co. v. McKendree*, 203 U. S. 529; *El Paso & N. E. R. R. Co. v Gutierrez*, 215 U. S. 97.

The following is from the *Employers Liability Cases*:

> "As the Act before us by its terms relates to every common carrier engaged in interstate commerce and to any of the employes of every such carrier, thereby regulating every relation of a carrier engaged in interstate commerce with its servants and of such servants among themselves, we are unable to say that the statute would have been enacted had its provisions been restricted to the limited relations of that character which it was within the power of Congress to regulate. On this subject the opinion in the *Trade-mark Cases*, 100 U. S. 82, where an Act of Congress concerning trade-marks was held to be unconstitutional, because too broad in its scope, is pertinent and instructive. The Court said (p. 99):
>
> "'If we should, in the case before us, undertake to make by judicial construction a law which Congress did not make, it is quite probable we should do what, if the matter were now before that body, it would be unwilling to do; namely, make a trade-mark law which is only partial in its operation, and which would complicate the rights which parties would hold, in some instances under the Act of Congress, and in others under state law. *Cooley, Const. Lim.* 178, 179; *Commonwealth v. Hitchings*, 5 Gray (Mass.) 482.'"

It was held that the provisions of the statute were inseparable as to the matters mentioned, and, therefore, they could not stand as to any employes.

Illinois Central R. R. Co. v. McKendree involved the validity of an order of the Secretary of Agriculture covering both intrastate and interstate commerce. The Court said it had no means of knowing whether the secretary would have made the order if limited to interstate commerce, it being in terms single and indivisible, and declared it void in whole. The following from *United States v. Reese*, 92 U. S. 221, was quoted with approval:

> "We are, therefore, directly called upon to decide whether a penal statute enacted by Congress, with its limited powers, which is in general language broad enough to cover wrongful acts without as well as within the constitutional jurisdiction, can be limited by judicial construction so as to make it operate only on that which Congress may rightfully prohibit and punish. For this purpose we must take these sections of the statute as they are. We are not able to reject a part which is unconstitutional and retain the remainder, because it is not possible to separate that which is unconstitutional, if there be any such, from that which is not. The proposed effect is not to be attained by striking out or disregarding words that are in the section, but by inserting those that are not now there. Each of the sections must stand as a whole, or fall altogether. The language is plain. There is no room for construction, unless it be as to the effect of the Constitution. The question, then, to be determined is, whether we can introduce words of limitation into a penal statute so as to make it specific, when, as expressed, it is general only."

In *Railway Co. v. Gutierrez* the Court stated the question to be considered in cases of this kind as follows:

"It remains to inquire whether it is plain that Congress would have enacted the legislation had the Act been limited to the regulation of the liability to employes engaged in commerce within the District of Columbia and the territories. If we are satisfied that it would not, or that the matter is in such doubt that we are unable to say what Congress would have done omitting the unconstitutional feature, then the statute must fall. *Illinois Central R. R. Co. v. McKendree*, 203 U. S. 514; *Employers' Liability Cases*, 207 U. S., *supra*."

Applying this test, no part of the Act can stand, even if it be not in violation of the Fourteenth Amendment; for the Court cannot say that the Legislature would have passed it with the provision relating to traffic claims limited to ~~interstate~~ commerce.

Respectfully submitted,
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MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS *v.* CADE.

ERROR TO THE JUSTICE COURT, PRECINCT NO. 7, DALLAS COUNTY, TEXAS.

No. 522. Submitted February 24, 1914.—Decided May 11, 1914.

Where a state statute has been held unconstitutional under the state constitution by an inferior state court, and subsequently has been upheld by the highest court of the State, this court, when the case is properly here under § 237, Judicial Code, must regard the statute as valid under the state constitution and consider only the question of its validity under the Federal Constitution, although intermediately this court has followed the decision of the lower state court.

The validity of a state statute under the commerce clause or the Act to Regulate Commerce cannot be attacked in a suit which is not based upon a claim arising out of interstate commerce.

A State may classify claims against persons or corporations where there is no classification of debtors and where the claims are not grouped together for the purpose of bearing against any class of citizens or corporations.

A state police regulation designed to promote payment of small claims of certain classes and discourage unnecessary litigation respecting them should not be set aside by the Federal courts on the ground that claims of other kinds have not been included, where the legislature was presumably dealing with an actual mischief and made the act as broad in its scope as seemed necessary from the practical standpoint.

The Fourteenth Amendment does not require that state laws shall be perfect.

In the absence of a construction by the state courts to that effect, this court will not concede that a state statute confers its benefits only upon natural persons who are plaintiffs in certain classes of actions and not upon corporation plaintiffs.

A defendant corporation is not in a position to assail a state statute as denying equal protection of the law because its benefits do not inure to corporations which are plaintiffs.

If the classification is otherwise reasonable, a state statute does not deny equal protection of the law because attorney's fees are allowed to successful plaintiffs only and not to successful defendants. The classification is reasonable.

A statute allowing an attorney's fee in cases involving small amounts is not one imposing a penalty where it appears that the effect is merely to require defendant to reimburse plaintiff for part of his expenses.

This court follows the construction of the highest court of the State to the effect that a statute imposing an attorney's fee on the defeated defendant is limited to claims of an amount specified in the title.

The statute of Texas of 1909 imposing an attorney's fee on the defeated defendant in certain classes of cases, as the same has been construed by the highest court of that State, is not unconstitutional under the equal protection provision of the Fourteenth Amendment. *Gulf, Colorado & Santa Fe Ry. Co.* v. *Ellis*, 165 U. S. 150, distinguished.

THE facts, which involve the construction and constitutionality under the equal protection provision of the Fourteenth Amendment of a statute of Texas of 1909 imposing an attorney's fee on the defeated defendant in certain classes of cases, are stated in the opinion.

Mr. Joseph M. Bryson, *Mr. Aldis B. Browne*, *Mr. Alexander S. Coke* and *Mr. A. H. McKnight*, for plaintiff in error:

The act is void because in conflict with the due process and equal protection provisions of the Fourteenth Amendment.

The act is in part a regulation of, a burden upon and an interference with interstate commerce, contrary to subd. 3, § 8, Art. I, Constitution of the United States, and is in conflict with the Act to Regulate Commerce, and to that extent is void, and since the good, if any, and the bad in it are so intermingled that the one cannot be separated from the other, the act must fail in whole.

In support of these contentions, see *Adams Exp. Co.* v. *Croninger*, 226 U. S. 491; *Adams Exp. Co.* v. *New York*, 232 U. S. 14; *A., T. & S. F. Ry. Co.* v. *Matthews*, 174 U. S. 96; *Atlantic Coast Line* v. *Riverside Mills*, 219 U. S. 186; *Barbier* v. *Connolly*, 113 U. S. 27; *Barrett* v. *Indiana*, 229 U. S. 30; *Blake* v. *McClung*, 172 U. S. 259; *Bradley* v. *Richmond*, 227 U. S. 481; *Central R. R. Co.* v. *Murphey*, 196 U. S. 194; *C., R. I. & P. Ry. Co.* v. *Hardwick Elevator Co.*, 226 U. S. 426; *Chi., Mil. &c. Ry. Co.* v. *Polt*, 232 U. S. 165; *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540; *Cotting* v. *Kansas City Stock Yards*, 183 U. S. 79; *El Paso & N. E. R. R. Co.* v. *Gutierrez*, 215 U. S. 97; *Employers' Liability Cases*, 207 U. S. 501; *Fidelity Mut. Life Ass'n* v. *Mettler*, 185 U. S. 308; *Ft. Worth &c. Ry. Co.* v. *Lloyd*, 132 S. W. Rep. 899; *G., C. & S. F. Ry. Co.* v. *Dennis*, 224 U. S. 503; *G., C. & S. F. Ry. Co.* v. *Ellis*, 165 U. S. 150; *G., C. & S. F. Ry. Co.* v. *Hefley*, 158 U. S. 98; *G., C. & S. F. Ry. Co.* v. *Thorn*, 227 U. S. 675; *Hale* v. *Henkel*, 201 U. S. 76; *Ill. Cent. R. R. Co.* v. *McKendree*, 203 U. S. 529; *Int. Com. Comm.* v. *L. & N. R. R. Co.*, 227 U. S. 88; *Kansas City Southern Ry. Co.* v. *Carl*, 227 U. S. 639; *M. K., & T. Ry. Co.* v. *Harriman*, 227 U. S. 657; *M., K. & T. Ry. Co. of Tex.* v. *Mahaffey*, 150 S. W. Rep. 881; *Mo. Pac. Ry. Co.* v. *Humes*, 115 U. S. 512; *Mondou* v. *N. Y., N. H. & H. R. R. Co.*, 223 U. S. 1; *Nor. Pac. Ry. Co.* v. *Washington*, 222 U. S. 370; *St. L., I. M. & So. Ry. Co.* v. *Wynne*, 224 U. S.

354; *St. L. & S. F. Ry. Co.* v. *Mathews*, 165 U. S. 1; *Seaboard Air Line* v. *Seegers*, 207 U. S. 73; *Simpson* v. *Shepard*, 230 U. S. 352; *Sinnot* v. *Davenport*, 22 How. 242; *Smyth* v. *Ames*, 169 U. S. 522; *Southern R. Co.* v. *Greene*, 216 U. S. 400; *Southern R. Co.* v. *Reid*, 222 U. S. 424; *Southern R. Co.* v. *Reid & Beam*, 222 U. S. 444; *United States* v. *Reese*, 92 U. S. 221; *Yazoo & Miss. Valley R. R. Co.* v. *Jackson Vinegar Co.*, 226 U. S. 217; *Yick Wo* v. *Hopkins*, 118 U. S. 356.

There was no appearance or brief filed for the defendant in error.

MR. JUSTICE PITNEY delivered the opinion of the court.

This action was brought in the Justice Court to recover the sum of ten dollars and seventy-five cents alleged to be due as wages from the defendant (now plaintiff in error) to the plaintiff below, with an attorney's fee of nine dollars. The fee was claimed only by virtue of an act of the legislature, approved March 13, 1909, Laws, p. 93, now forming Arts. 2178 and 2179, Texas Rev. Civ. Stat. 1911. Defendant specially excepted to this part of plaintiff's claim, on the ground that the act was invalid as constituting a burden upon interstate commerce, contrary to the Commerce Clause of the Federal Constitution and the Act to Regulate Commerce and amendments thereof, and as violating the "equal protection" and "due process" clauses of the Fourteenth Amendment. Notwithstanding these contentions, judgment was rendered in favor of plaintiff for the amount claimed, including the attorney's fee. Under the local practice, no appeal lies from a decision of the Justice Court to a higher state court in a case involving less than twenty dollars, and so the judgment is brought directly here by writ of error for a review of the Federal questions.

The statute in question (including its caption) is set

forth in the margin.[1] This is the same act that was held invalid under the state constitution by the Court of Civil Appeals in *Fort Worth & D. C. Ry. Co.* v. *Loyd*, 132 S. W. Rep. 899, because of which decision this court, in *Gulf, Col-*

[1] "An Act to regulate the presentation and collection of claims for personal services or for labor rendered, or for material furnished, or for overcharges in freight or express, or for any claim for lost or damaged freight, or for stock killed or injured by any person or corporation, against any person or corporation doing business in this State, and providing a reasonable amount of attorney's fees to be recovered, in cases where the amount of such claims shall not exceed two hundred ($200) dollars, and declaring an emergency.

"SECTION 1. That hereafter any person in this State, having a valid, *bona fide* claim against any person or corporation doing business in this State, for personal services rendered or for labor done, or for material furnished, or for overcharges on freight or express, or for any claim for lost or damaged freight, or for stock killed or injured by such person or corporation, its agents or employés, may present the same to such person or corporation or to any duly authorized agent thereof, in any county where suit may be instituted for the same; and if, at the expiration of thirty days after the presentation of such claim, the same has not been paid or satisfied, he may immediately institute suit thereon in the proper court, and if he shall finally establish his claim, and obtain judgment for the full amount thereof, as presented for payment to such person or corporation in such court he shall be entitled to recover the amount of such claim and all costs of suit, and in addition thereto a reasonable amount as attorney's fees, provided, he has an attorney employed in the case, not to exceed twenty ($20.00) dollars, to be determined by the court or jury trying the case; provided, however, that nothing in this Act shall be construed to repeal or in any manner affect any provision of the law now in force giving a remedy to persons having claims of the character mentioned in this Act, but the same shall be considered as cumulative of all other remedies given to such a person or persons.

"SEC. 2. The fact that there is no law now in force in this State providing an effectual remedy for persons having such claims as are mentioned in this Act, creates an emergency and an imperative public necessity requiring the suspension of the constitutional rule requiring bills to be read on three several days, and this Act shall take effect from and after its passage, and it is so enacted.

"Approved March 13, 1909."

orado & S. F. Railway v. *Dennis*, 224 U. S. 503, reversed a judgment that included an attorney's fee, without passing upon the question whether the act contravened the Fourteenth Amendment. And see *Gulf, Colorado & S. F. Railway* v. *Thorn*, 227 U. S. 675. Since that time the Supreme Court of Texas, overruling the decision in the *Loyd Case*, has upheld the act under the Texas constitution, in *Missouri, Kan. & Texas Ry. Co. of Texas* v. *Mahaffey*, 105 Texas, 394. We must therefore now consider the Federal questions.

But first, we should note the construction placed upon the act by the state court of last resort. Section 35 of Article III of the constitution of 1876 declares that no bill except appropriation bills shall contain more than one subject, which shall be expressed in its title; "But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed." In the case last mentioned (105 Texas, 394, 398), the court construed the act as limited in its operation to the purpose expressed in the title, that is, as relating only to the collection of claims not exceeding two hundred dollars in amount, and as conferring no right upon persons having claims exceeding that amount which did not exist independently of the act. In reaching this conclusion, the court said: "Surely, the Legislature did not intend to limit attorney's fees to twenty dollars in a case involving one thousand dollars, and there is no apparent reason for allowing additional attorney's fee of twenty dollars in a case involving so large an amount, but there is a sound reason for allowing and limiting the amount of fee on small claims. If the claim be two hundred dollars, or less, and suit must be instituted, which makes an attorney necessary, it is a heavy tax on the claimant; therefore, if he present a just demand which is refused, the recovery of the full amount claimed shows that the demand of payment should have

been granted, and this law compels one refusing payment of such demand to pay the cost and attorney's fees, not to exceed twenty dollars. The limitation of the amount of the fee to twenty dollars and to cases in which an attorney has been actually employed practically implies that such action might be prosecuted without an attorney which in effect limits the amount of the claim to two hundred dollars, because the only court in which suits of that character could be instituted by non-professional claimants, without the services of an attorney, is that of justice of the peace, whose jurisdiction cannot exceed two hundred dollars, therefore, the limitation in the caption is in effect the same as that of the body of the law, because the proviso in the law can be harmonized with the title by no other construction."

So far as the present attack is founded upon the commerce clause and the Act to Regulate Commerce, it is sufficient to say that the judgment under review was not based upon a claim arising out of interstate commerce, and hence plaintiff in error does not bring itself within the class with regard to whom it claims the act to be in this respect repugnant to the Constitution and laws of the United States. *Seaboard Air Line* v. *Seegers*, 207 U. S. 73, 76; *Tyler* v. *Judges*, 179 U. S. 405, 409; *Hooker* v. *Burr*, 194 U. S. 415, 419; *Hatch* v. *Reardon*, 204 U. S. 152, 160; *Southern Railway Co.* v. *King*, 217 U. S. 524, 534; *Standard Stock Food Co.* v. *Wright*, 225 U. S. 540, 550; *Rosenthal* v. *New York*, 226 U. S. 260, 271; *Farmers Bank* v. *Minnesota*, 232 U. S. 516, 530; *Plymouth Coal Co.* v. *Pennsylvania*, 232 U. S. 531, 544.

Upon the other questions, plaintiff in error relies chiefly upon *Gulf, Colorado & Santa Fe Ry.* v. *Ellis*, 165 U. S. 150. In that case a previous act of the legislature of Texas (act of April 5, 1889, c. 107, General Laws, p. 131; Supp. to Sayles' Tex. Civ. Stat., Art. 4266 *a;* p. 768) was held repugnant to the Fourteenth Amendment. That act

allowed the recovery of plaintiff's attorney's fees in certain classes of cases, but only where the defendant was a railroad company, and it was adjudged to be invalid because it singled out a particular class of debtors and imposed this burden upon them, without any reasonable ground existing for the discrimination. The classification was held to be arbitrary, because having no relation to the special privileges granted to this class of corporations, or to the peculiar features of their business, distinguishing *Missouri Pacific Railway Co.* v. *Humes*, 115 U. S. 512.

The present statute, however, differs in essential features. It applies to claims "against any person or corporation doing business in this State, for personal services rendered or for labor done, or for material furnished, or for overcharges on freight or express, or for any claim for lost or damaged freight, or for stock killed or injured by such person or corporation, its agents or employés." There is here no classification of debtors; the act bears equally against individuals and against corporations of any class doing business in the State. It applies only to certain kinds of claims; but these cover a wide range, and do not appear to have been grouped together for the purpose of bearing against any class or classes of citizens or corporations. Unless something of this sort did appear, we should not be justified in holding the act to be repugnant to the Fourteenth Amendment. It is a police regulation designed to promote the prompt payment of small claims and to discourage unnecessary litigation in respect to them. The claims included appear to be such as are susceptible of being readily adjusted by the party responsible, within the thirty days that must intervene between the presentation of the claim and the institution of suit. We may imagine that some other kinds of claims might as well have been included; but it is to be presumed that the legislature was dealing with an actual mischief, and made the act as broad in its scope as seemed

necessary from the practical standpoint. As has been said before, the Fourteenth Amendment does not require that state laws shall be perfect; and we cannot judicially denounce this act as based upon arbitrary distinctions, in view of the wide discretion that must necessarily reside in a state legislature about resorting to classification when establishing regulations for the welfare of those for whom they legislate. *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 283, 293; *Orient Insurance Co.* v. *Daggs*, 172 U. S. 557, 562; *Louisville & Nashville R. R.* v. *Melton*, 218 U. S. 36, 52; *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 78.

It is insisted that the benefits of the act are conferred upon natural persons only; but this we cannot concede, in the absence of a decision by the courts of the State giving to it a construction thus limited. *Plymouth Coal Co.* v. *Pennsylvania*, 232 U. S. 531, 546. And besides, plaintiff in error is not in a position to assail the legislation on the ground that corporation-plaintiffs are not included within its benefits. *Rosenthal* v. *New York*, 226 U. S. 260, 271.

If the classification is otherwise reasonable, the mere fact that attorney's fees are allowed to successful plaintiffs only, and not to successful defendants, does not render the statute repugnant to the "equal protection" clause. This is not a discrimination between different citizens or classes of citizens, since members of any and every class may either sue or be sued. *Actor* and *reus* differ in their respective attitudes towards a litigation; the former has the burden of seeking the proper jurisdiction and bringing the proper parties before it, as well as the burden of proof upon the main issues; and these differences may be made the basis of distinctive treatment respecting the allowance of an attorney's fee as a part of the costs. *Atchison, Topeka &c. Railroad* v. *Matthews*, 174 U. S. 96; *Farmers' &c. Ins. Co.* v. *Dobney*, 189 U. S. 301, 304; *McMullin* v. *Doughty*, 68 N. J. Eq. 776, 781.

Even were the statute to be considered as imposing a penalty upon unsuccessful defendants in cases within its sweep, such penalty is obviously imposed as an incentive to prompt settlement of small but well-founded claims, and as a deterrent of groundless defenses, which are the more oppressive where the amount involved is small. In *Seaboard Air Line* v. *Seegers*, 207 U. S. 73, 77, the court sustained a state enactment that imposed a fixed penalty of fifty dollars upon common carriers, to be recovered by the party aggrieved, for failure to promptly adjust and pay claims for loss or damage to property while in the carrier's possession. In *Yazoo & Miss. R. R.* v. *Jackson Vinegar Co.*, 226 U. S. 217, 219, we upheld a state enactment that imposed a penalty of twenty-five dollars in addition to actual damages for failure to settle claims for lost or damaged freight within a limited time after written notice of the loss. And in *Kansas City Southern Ry.* v. *Anderson*, decided this term, *ante*, p. 325, we upheld the imposition of double damages in cases admitting of special treatment.

But we think it is not correct to consider this statute as imposing a penalty. The allowance is confined to a reasonable attorney's fee, not exceeding twenty dollars, where an attorney is actually employed; the amount to be determined by the court or jury trying the case. Manifestly, the purpose is merely to require the defendant to reimburse the plaintiff for a part of his expenses not otherwise recoverable as "costs of suit." So far as it goes, it imposes only compensatory damages upon a defendant who, in the judgment of the legislature, unreasonably delays and resists payment of a just demand. The outlay for an attorney's fee is a necessary consequence of the litigation, and since it must fall upon one party or the other, it is reasonable to impose it upon the party whose refusal to pay a just claim renders the litigation necessary. The allowance of ordinary costs of suit to the

prevailing party rests upon the same principle. 2 Bac. Abr. tit. Costs. Numerous cases in the state courts have sustained similar legislation. *Vogel* v. *Pekoc*, 157 Illinois, 339, 344, 346; *Burlington &c. Ry. Co.* v. *Dey*, 82 Iowa, 312, 340; *Cameron* v. *Chicago &c. Ry. Co.*, 63 Minnesota, 384, 388; *Wortman* v. *Kleinschmidt*, 12 Montana, 316, 330. If a reasonable penalty may be imposed for failure to satisfy a demand found to be just, it follows *a fortiori* that costs and an attorney's fee may be. See *Atchison, Topeka &c. Railroad* v. *Matthews*, 174 U. S. 96, 105; *Farmers' &c. Ins. Co.* v. *Dobney*, 189 U. S. 301, 304.

For these reasons, it seems to us that the statute in question is not repugnant to either the "equal protection" or the "due process" clauses of the Fourteenth Amendment.

Judgment affirmed.